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AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1369

Introduced by Assembly Member Pavley
(Coauthors: Assembly Members Calderon, Hancock, Koretz,
Maze, Mullin, and Vargas)
(Coauthors: Senators Machado, Romero, and Soto)

February 21, 2003

An act to add Section 1569.7 to the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 1369, as amended, Pavley. Residential care facilities for the elderly: automatic external defibrillators.

Existing law authorizes the Emergency Medical Services Authority to establish minimum standards for the training and use of automatic external defibrillators by individuals not otherwise licensed or certified for the use of the device.

Under existing law, the State Department of Social Services licenses and regulates residential care facilities for the elderly.

A violation of provisions relating to residential care facilities for the elderly is a crime.

This bill would, commencing July 1, 2005, require every residential care facility for the elderly, where the facility's licensed bed capacity exceeds 60 persons, to ~~use, acquire, maintain, and train personnel in the use of~~ automatic external defibrillators, ~~in accordance with as provided in the bill and specified existing law.~~ This bill would also provide that, except as prescribed, when an employee of a residential care facility for the elderly uses or attempts to use an automatic external defibrillator to render emergency care or treatment in a manner consistent with the bill, neither the employee, *the facility*, nor the board of directors of that facility is liable for civil damages resulting from any acts or omissions in rendering the emergency care or treatment.

This bill would provide that each resident, whether or not he or she executes an advance health care directive, including, but not limited to, a request to forego resuscitative measures or a do-not-resuscitate order, shall indicate separately, in writing, if he or she does not want facility employees to use an automatic external defibrillator if he or she needs emergency care or treatment. The bill would also establish procedures to be used by residential care facilities for the elderly with respect to the presentation and maintenance of these written statements, and would require facilities to provide residents with additional specified information.

~~Because this bill would create a new crime, it would impose new duties upon local law enforcement agencies, thus constituting a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

This bill would require the Emergency Medical Services Authority to notify local EMS agencies of the provision of the bill, and to encourage the local agencies to track the use of automatic external defibrillators in residential care facilities for the elderly.

This bill would provide that, notwithstanding a specified provision of existing law, violation of the bill shall not constitute a misdemeanor.

This bill would also apply its provisions relating to liability to a residential care facility for the elderly with a licensed capacity of 60 or

fewer beds that elects to acquire, maintain, and train personnel in the use of an automatic external defibrillator at the facility.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1569.7 is added to the Health and Safety
2 Code, to read:

3 1569.7. (a) Commencing July 1, 2005, every residential care
4 facility for the elderly as defined in Section 1569.2 with a licensed
5 bed capacity that exceeds 60 persons shall ~~use~~ *acquire, maintain,*
6 *and train personnel in the use of* an automatic external
7 defibrillator, ~~in accordance with law, pursuant to Section 1797.190~~
8 ~~and paragraphs (1) and (2) of subdivision (b) of Section 1797.196.~~
9 *pursuant to Section 1797.190, subdivision (e), and any relevant*
10 *regulations.*

11 (b) An employee of a residential care facility for the elderly
12 who uses, or attempts to use, an automatic external defibrillator
13 consistent with the terms of this section to render emergency care
14 or treatment is not liable for civil damages resulting from any acts
15 or omissions in rendering the emergency care or treatment, except
16 as provided in subdivision ~~(d)~~ (f).

17 (c) When an employee uses, or attempts to use, an automatic
18 external defibrillator consistent with the requirements of this
19 section to render emergency care or treatment, the members of the
20 board of directors of the facility shall not be liable for civil
21 damages resulting from any act or omission in rendering the
22 emergency care or treatment, except as provided in subdivision ~~(d)~~
23 (f).

24 ~~(d) Subdivision (b) does~~ *Except as provided in subdivision (f),*
25 *when an employee uses, or attempts to use an automatic external*
26 *defibrillator in accordance with this section to render emergency*
27 *care or treatment, the facility shall not be liable for civil damages*
28 *resulting from any act or omission in the course of rendering that*
29 *emergency care or treatment, provided that the facility fully*
30 *complies with subdivision (e).*

31 (e) *In order to ensure public safety, a residential care facility for*
32 *the elderly shall do all of the following:*

1 (1) *Comply with all regulations governing the placement of an*
2 *automatic external defibrillator.*

3 (2) *Ensure all of the following:*

4 (A) *The automatic external defibrillator is maintained and*
5 *regularly tested according to the operation and maintenance*
6 *guidelines set forth by the manufacturer, the American Heart*
7 *Association, and the American Red Cross, and according to any*
8 *applicable rules and regulations set forth by the governmental*
9 *authority under the federal Food and Drug Administration and*
10 *any other applicable state and federal authority.*

11 (B) *The automatic external defibrillator is checked for*
12 *readiness after each use and at least once every 30 days if the*
13 *automatic external defibrillator has not been used in the preceding*
14 *30 days. Records of these checks shall be maintained.*

15 (C) *Any person who renders emergency care or treatment on a*
16 *person in cardiac arrest by using an automatic external*
17 *defibrillator activates the emergency medical services system as*
18 *soon as possible, and reports any use of the automatic external*
19 *defibrillator to the licensed physician and to the local EMS agency.*

20 (D) *For every automatic external defibrillator unit acquired,*
21 *up to five units, no less than one employee per automatic external*
22 *defibrillator unit shall complete a training course in*
23 *cardiopulmonary resuscitation and automatic external*
24 *defibrillator use that complies with the regulations adopted by the*
25 *Emergency Medical Service Authority and the standards of the*
26 *American Heart Association or the American Red Cross. After the*
27 *first five automatic external defibrillator units are acquired, for*
28 *each additional five automatic external defibrillator units*
29 *acquired, one employee shall be trained beginning with the first*
30 *automatic external defibrillator unit acquired. Acquirers of*
31 *automatic external defibrillator units shall have trained*
32 *employees available to respond to an emergency that may involve*
33 *the use of an automatic external defibrillator unit during normal*
34 *operating hours.*

35 (E) *There is a written plan that exists that describes the*
36 *procedures to be followed in the event of an emergency that may*
37 *involve the use of an automatic external defibrillator, to ensure*
38 *compliance with the requirements of this section. The written plan*
39 *shall include, but not be limited to, immediate notification of 911*

1 *and trained office personnel at the start of automatic external*
2 *defibrillator procedures.*

3 (f) Subdivisions (b), (c), and (d) do not apply in the case of
4 personal injury or wrongful death that results from gross
5 negligence or willful or wanton misconduct on the part of the
6 person who uses an automatic external defibrillator to render
7 emergency care or treatment.

8 ~~(e)~~

9 (g) Each resident, whether or not he or she has executed an
10 advance health care directive, including, but not limited to, a
11 request to forego resuscitative measures or a do-not-resuscitate
12 order, shall indicate separately, in writing, if he or she does not
13 want facility employees to use an automatic external defibrillator.
14 If a resident has indicated in writing that he or she does not want
15 facility employees to use an automatic external defibrillator if he
16 or she needs emergency care or treatment, facility employees shall
17 withhold the use of an automatic external defibrillator.

18 ~~(f)~~

19 (h) (1) In order to implement this section, residential care
20 facilities for the elderly shall establish policies or procedures, or
21 appropriately amend their current policies and procedures, to
22 address the presentation, processing, maintenance, revision, and
23 information-dissemination of statements indicating that a resident
24 does not want facility employees to use an automatic external
25 defibrillator if the resident needs emergency care or treatment, and
26 to the extent possible, make these processes consistent with current
27 systems for advance health care directives pursuant to Section
28 1569.156.

29 (2) Lists of those residents who have indicated in writing that
30 they do not want facility employees to use an automatic external
31 defibrillator shall be made available to employees trained in the
32 use of the automatic external defibrillator in the facility, and a copy
33 of the list shall be maintained with each automatic external
34 defibrillator unit maintained in the facility. Statements indicating
35 that a resident does not want facility employees to use an automatic
36 external defibrillator shall be maintained in the resident file, with
37 copies in other locations where advance health care directives are
38 also stored and maintained in the facility.

39 (3) Prior to July 1, 2005, the facility shall inform current
40 residents or their responsible parties about automatic external

1 defibrillators and the resident's option to state in writing that he or
2 she does not want facility employees to use an automatic external
3 defibrillator if the resident needs emergency care or treatment.
4 New residents or their responsible parties shall be informed upon
5 admission about automatic external defibrillators and the
6 resident's option to state in writing that he or she does not want
7 facility employees to use an automatic external defibrillator if the
8 resident needs emergency care or treatment.

9 (4) Information about automatic external defibrillators
10 provided to residents shall include information consistent with that
11 published and distributed by the American Heart Association and
12 the American Red Cross on automatic external defibrillators.

13 (5) The facilities shall provide information, when possible and
14 appropriate, to residents or their responsible parties about
15 automatic external defibrillators and shall ask if a statement
16 indicating that the resident does not want facility employees to use
17 an automatic external defibrillator should be readdressed,
18 changed, or initiated, at the wishes and discretion of the resident
19 or their responsible parties. This shall be done at a minimum of
20 once every two years.

21 (6) If a resident of a residential care facility for the elderly
22 begins receiving hospice services from a licensed hospice, as
23 defined in Section 1339.31, the residential care facility for the
24 elderly shall provide information to that resident or their
25 responsible party about automatic external defibrillators and ask
26 if a statement indicating that the resident does not want facility
27 employees to use an automatic external defibrillator should be
28 readdressed, changed, or initiated at the wishes and discretion of
29 the resident or their responsible parties.

30 ~~(g)~~

31 (i) The department may adopt emergency regulations to
32 implement this section in accordance with the rulemaking
33 provisions of the Administrative Procedure Act (Chapter 3.5
34 (commencing with Section 11340) of Part 1 of Division 3 of Title
35 2 of the Government Code). The initial adoption of emergency
36 regulations and one readoption of the initial regulations shall be
37 deemed to be an emergency and necessary for the immediate
38 preservation of the public peace, health and safety, or general
39 welfare. Initial emergency regulations and the first readoption of
40 those regulations shall be exempt from review by the Office of

1 Administrative Law. The initial emergency regulations and the
2 first readoption of those regulations authorized by this subdivision
3 shall be submitted to the Office of Administrative Law for filing
4 with the Secretary of State and publication in the California Code
5 of Regulations and each shall remain in effect for no more than 180
6 days.

7 ~~SEC. 2.— No reimbursement is required by this act pursuant to~~
8 ~~Section 6 of Article XIII B of the California Constitution because~~
9 ~~the only costs that may be incurred by a local agency or school~~
10 ~~district will be incurred because this act creates a new crime or~~
11 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
12 ~~for a crime or infraction, within the meaning of Section 17556 of~~
13 ~~the Government Code, or changes the definition of a crime within~~
14 ~~the meaning of Section 6 of Article XIII B of the California~~
15 ~~Constitution.~~

16 (j) *The Emergency Medical Service Authority shall notify local*
17 *EMS agencies of this section and shall encourage the local EMS*
18 *agencies to track the number of times automatic external*
19 *defibrillators are employed on residents at residential care*
20 *facilities for the elderly.*

21 (k) *Notwithstanding Section 1569.40, violation of this section*
22 *shall not constitute a misdemeanor.*

23 (l) *Subdivisions (b), (c), and (d) shall also apply to a residential*
24 *care facility for the elderly with a licensed bed capacity of 60 or*
25 *fewer persons that elects to acquire, maintain, and train personnel*
26 *in the use of an automatic external defibrillator at the facility.*

